

## 1.0 BACKGROUND

The Local Government Act 2009 ("the LGA 2009") (sections 43 to 48) and the Local Government Regulations 2012 ("LGR2012") (Chapter 3) provide details on how the National Competition Policy and anti-competitive provisions (and their related provisions) apply to local governments.

### 1.1 Competitive Neutrality Principle

S43 to 48 LGA 2009 provides details on how the competitive neutrality principle applies to 'significant business activities'.

### 1.2 Code of Competitive Conduct

S33 LGR2012 states that "if a local government applies the code of competitive conduct to a business activity, the local government must apply the competitive neutrality principle to the business activity". S44 LGA2009 provides examples of how to apply the competitive neutrality principle.

S47 LGA2009 requires a local government to apply the code of competitive conduct to its:

- Building certifying activity
- Constructing/maintaining certain State controlled roads

To be classed as 'building certifying activity', the local government must be listed in S38 LGR2012.

S47 LGA2009 also states that "a local government must decide each financial year, by resolution, whether or not to apply the code of competitive conduct to any other business activities".

### 1.3 Competitive Neutrality Complaints

Div 7 LGR2012 and S48 LGA 2009 provide information regarding how Competitive Neutrality Complaints are to be managed by local governments. S48 LGA2009 states that a competitive neutrality complaint is a complaint that relates to the failure of a local government to conduct a business activity in accordance with the competitive neutrality principle.

## 2.0 APPLICATION

To be a 'significant business activity', a business activity needs to meet certain thresholds (S43.4b LGA2009). These thresholds are greater than the current activity levels of Council's Water, Sewerage and Waste operations so these activities are not deemed 'significant'.

Hinchinbrook Shire Council ("Council") is not included in S38 LGR2012 so Council's building certification activities are not deemed as a 'business activity' (for these purposes) and accordingly not subject to the code of competitive conduct.

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Further to S47 LGA2009, Council resolved, on 30 June 2015, to NOT apply the code of competitive conduct to its water, sewerage, waste management or building activities during 2015/16.

Further to S33 LGR2012, as the code of competitive conduct does not apply to Council's activities, Council is not obliged to apply the competitive neutrality principle to these activities.

### 3.0 REPORTING

S45(a) LGA2009 requires a local government to list in its annual report all business activities conducted during the financial year and identify those that are deemed 'significant business activities'. As Council has no significant business activities the reporting requirements under S45 are not applicable.

### 4.0 CONCERNS AND COMPLAINTS

In accordance with S44(2a) LGR2012, Council is committed to addressing all concerns before they escalate to becoming formal complaints.

Any concern regarding competitive neutrality that falls within the scope of S48 LGA2009 should, in the first instance be addressed in writing to the CEO of Council. The CEO will then, directly or indirectly, investigate the concern and either:

- a) Provide a written response within 28 business days or
- b) Write to the affected person advising that greater time will be required.

Note – the CEO may invite the affected person to attend a meeting where the CEO deems that it would be worthwhile.

While conducting the initial review, the principles that apply within Council's Complaint Policy and related documents will apply. Where an affected person is dissatisfied with the response from the CEO, or where the affected person so chooses, the affected person, and other parties, are to follow the processes as per S45 to S55 LGR2012.

### 5.0 REGISTER OF BUSINESS ACTIVITIES

In accordance with S56 LGR2012, the following registers are maintained, as required, at Council office

- business activities to which the competitive neutrality principles apply;
- business activities to which code of competitive conduct applies;
- details of any competitive neutrality complaints

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